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OFFICE OF PETITIONS

In re Application of	:	
Ben Achour et al.	:	
Application No. 10/733,232	:	ON APPLICATION FOR
Filed: December 12, 2003	:	PATENT TERM ADJUSTMENT
Atty Docket No. 3495.0381-00	:	

This is a decision on the PETITION TO THE DIRECTOR UNDER 37 C.F.R. § 1.181 REQUESTING REVIEW OF THE DISMISSAL OF PATENTEE'S REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT - PRE GRANT filed May 17, 2010. Patentees maintain that the correct patent term adjustment to be indicated on the patent is five hundred nine (509) days.

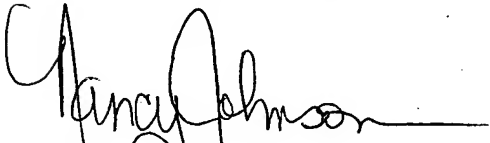
An initial application for patent term adjustment was timely filed on December 19, 2008. By decision mailed March 17, 2010, the application for patent term adjustment was dismissed. The request for reconsideration of the patent term adjustment to the extent it related to the Office's failure to issue the patent within 3 years of the filing date was dismissed as prematurely filed before issuance of the patent. The Office also dismissed the request to enter a 130 day period of adjustment for Office delay in mailing a response to applicant's request for continued examination filed June 25, 2007 on March 4, 2008. This request was based on the Office withdrawing the September 7, 2007 Office action and mailing a corrected Office action on March 4, 2008.

On instant petition, patentee does not renew their request for reconsideration of the period of delay pursuant to 37 CFR 1.702(b). The patent issued on April 20, 2010. The revised patent term adjustment set forth thereon of 379 days included 75 days of adjustment for Office delay in taking in excess of three

years to issue the patent. Patentees agree with this calculation.

Rather, patentee's continues to maintain that a period of adjustment should have been entered for Office delay in taking action in response to the request for continued examination filed June 25, 2007. The Office's decision not to enter a period of adjustment of 130 days for Office delay in responding to the request for continued examination (RCE) filed June 25, 2007 is affirmed. The mailing of a second Office action on March 4, 2008 withdrawing the first action does not negate the fact that the Office took action in this application within the meaning of § 1.702(a)(2) on September 7, 2007. This was within four months of the filing of the RCE, and thus, no entry of adjustment for Office delay is warranted.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a long horizontal stroke extending to the right.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions